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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,095	04/01/2004	Dominic A. Cataldo	BGT 2-007	9481
265 7590 09/29/2009 MUELLER AND SMITH, LPA MUELLER-SMITH BUILDING 7700 RIVERS EDGE DRIVE COLUMBUS, OH 43235			EXAMINER LEVY, NEIL S	
			ART UNIT 1615	PAPER NUMBER
			MAIL DATE 09/29/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/816,095

Applicant(s)

CATALDO ET AL.

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14, 15, 17, 19, 20 and 39-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14, 15, 17, 19, 20 and 39-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-12, 14, 15, 17, 19, 20 and 39-41 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Note the restriction and species election of 2/06/06.

Claim Rejections - 35 USC § 103

Claim 1-12, 14, 15, 17, 19, 20, 39, 40 rejected under 35 U.S.C. 103(a) as being unpatentable over OHNO et al IN VIEW OF Beall et al AND Kknudson, jr..

OHNO provides solid, liquid or gas active control agent (column 3, bottom); a liquid form is mixed with phylosilicate, the instant nanoclay [0019] and heated to 40-120 degrees F (column 3, bottom; column 40, line 20). The loaded nanoclays are then formed into barriers (column 7, line 30- column 8, line 13). These include paints, plastics, caulking. Applicant has shown no criticality in the heat liquefying of a solid agent, opposed to providing a liquid agent. Both permit adsorption by clay. Neither is there a criticality to the claimed separate heating of agent and nanoclay, as opposed to heating the mixture. There was no intercalation with ammonium.

BEALL is cited as showing nanoclays, montmorillonite phylosilicates functionalized with ammonium and useful with instant pesticides. KNUDSON is cited to show the claim 19 instant C6ammonium intercalating agent.

Response to Arguments

Applicant's arguments filed 5/18/09 have been fully considered but they are not persuasive. Applicant argues CATALDO's declaration shows the organoclay and active to provide greater longevity than the OHNO organoclay. However, OHNO provides the instant phyllosilicates as claimed, shows that no solvent is required (col. 3, lines 66-col. 4, line 3) , and shows anti fungal compounds of the instant & of BEALL. OHNO describes barrier uses & polymers of the instant , but is considered with BEALL , & KNUDSON, not as a stand alone reference, As BEALL shows the advantage of intercalating followed by exfoliation.

The argued for declaration is stated to show 2-20 years of sustained release, an intercalated active, heating polymers to 120-350 degrees C are the facets of the instant invention not performed by OHNO, & thus , inferior. However, OHNO meets the claims as written, to the extent noted by examiner in the office actions of record. The argued for effects & conditions are not claimed. The declaration is beyond the scope of the claims.

/NEIL LEVY/

Primary Examiner, Art Unit 1615

9/272009